

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KENNETH R. HEDDLESTEN,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-11-430-M
)	
JUSTIN JONES, DIRECTOR,)	
)	
Respondent.)	

ORDER

On July 15, 2011, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation in this action brought pursuant to 28 U.S.C. § 2254, seeking a writ of habeas corpus. The Magistrate Judge recommended that respondent's motion to dismiss be granted, that petitioner be allowed 21 days to amend his habeas petition to omit the unexhausted claim, if petitioner does not choose to amend his habeas petition within that time period, that this case be dismissed without prejudice, and that petitioner's motion to appoint counsel be denied. The parties were advised of their right to object to the Report and Recommendation by August 5, 2011. On July 27, 2011, petitioner filed an Amended Petition omitting the unexhausted claim.

Upon de novo review, the Court:

- (1) ADOPTS the Report and Recommendation issued by the Magistrate Judge on July 15, 2011;
- (2) GRANTS respondent's Motion to Dismiss Petition for Writ of Habeas Corpus as a Mixed Petition [docket no. 8];
- (3) DENIES petitioner's Motion for Appointment of Counsel [docket no. 3]; and

(4) RECOMMITS this matter to the Magistrate Judge for further proceedings.

IT IS SO ORDERED this 11th day of August, 2011.



VICKI MILES-LaGRANGE
CHIEF UNITED STATES DISTRICT JUDGE